

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,  
D-4 COREY BAILEY,  
D-6 ROBERT BROWN, II  
D-10 DEVON PATTERSON,  
D-13 ARLANDIS SHY,  
D-16 JAMES ROBINSON,  
D-19 KEITHON PORTER,

Defendants.

PRETRIAL CONFERENCE

Tuesday, May 22, 2018

- - -

APPEARANCES:

For the Government:

CHRISTOPHER GRAVELINE, ESQ.  
JULIE FINOCCHIARO, ESQ.  
JUSTIN WECHSLER, ESQ.  
Assistant U.S. Attorney

For the Defendants:

HENRY M. SCHARG, ESQ.  
On behalf of Eugene Fisher

CRAIG A. DALY, ESQ.  
KEITH A. SPIELFOGEL, ESQ.  
On behalf of Corey Bailey

JAMES L. FEINBERG, ESQ.  
On behalf of Robert Brown

MARK H. MAGIDSON, ESQ.  
JOHN T. THEIS, ESQ.  
On behalf of Arlandis Shy

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WILLIAM W. SWOR, ESQ.  
On behalf of James Robinson

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3

STEVEN E. SCHARG, ESQ.  
On behalf of Keithon Porter

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*Theodore Levin United States Courthouse*  
*231 West Lafayette Boulevard, Room 1067*  
*Detroit, Michigan 48226*  
*(313) 962-1234*

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N O N E

Detroit, Michigan

Tuesday, May 22, 2019

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**THE CLERK:** Case Number 15-20652, Defendant  
Number 6, United States of America versus Robert Brown.

**MR. FEINBERG:** James L. Feinberg, attorney  
for Mr. Brown.

**MR. SPIELFOGEL:** Keith Spielfogel and Craig  
Daly on behalf of Corey Bailey.

**THE COURT:** Welcome.

**MR. SWOR:** William Swor on behalf of James  
Robinson.

**MR. MAGIDSON:** Mark Magidson and John Theis  
on behalf of Arlandis Shy.

**MR. JOHNSON:** Bertram Johnson on behalf of  
Devon Patterson.

**MR. S. SCHARG:** Steven Scharg on behalf of  
Keithon Porter.

**MR. H. SCHARG:** Henry Scharg on behalf Eugene  
Fisher.

**THE COURT:** Okay. Welcome.

**MR. GRAVELINE:** Chris Graveline, Justin  
Wechsler and Julie Finocchiaro on behalf of the United  
States.

1                   **THE COURT:** All right. Welcome.

2                   All right. The record should indicate that I had  
3 a brief conference with counsel for all the parties in  
4 chambers before coming out today.

5                   The Court has had an opportunity to consider the  
6 requests made by Mr. Swor on behalf of Mr. Robinson to  
7 sever from this group of defendants, and the Court will  
8 grant that request, and enter an order severing Mr.  
9 Robinson from this next upcoming trial. We'll put him off  
10 to a later date.

11                  The Court also indicated that -- that the  
12 reduction in number of defendants in this upcoming trial  
13 needed to be reduced in order to make it possible from a  
14 facility standpoint and a security standpoint to conduct  
15 the next trial --

16                  **MR. SWOR:** Your Honor?

17                  **THE COURT:** -- especially with the additional  
18 attorneys that the Court has having to participate.

19                  Mr. Swor?

20                  **MR. SWOR:** I'm sorry. Could we ask the Court  
21 for its continued assistance in trying to get Mr. Robinson  
22 back to Milan?

23                  **THE COURT:** Yeah. If we can get that  
24 arranged. Part of the reason for the Court granting this  
25 motion is because Mr. Robinson has been separated from the

1       discovery for a period of several weeks, if not months,  
2       and -- and the Court concluded that it would be unfair  
3       under those circumstances to bring him to trial. So we  
4       have to get him somehow together with the discovery  
5       material, and apparently there is a limit on the number of  
6       pages that can be given to an inmate at Sanilac, is that  
7       right?

8                   **MR. SWOR:** That's one of the issues.

9                   **THE COURT:** And so if it's possible to get  
10       him back to Milan, that would be great.

11                  **THE MARSHAL:** We will do our very best.

12                  **MR. SWOR:** Thank you.

13                  **THE COURT:** All right. So Mr. Swor, you're  
14       welcomed to get off to your next appointment.

15                  **MR. SWOR:** Thank you.

16                  **THE COURT:** As it relates to the remaining  
17       defendants in this group, the Court was asked by the  
18       government to consider an adjournment of the trial based  
19       upon some changes of circumstances for Mr. Graveline, who  
20       is leaving the U.S. Attorney's Office in two weeks. That  
21       request was not with objections by all of the defense  
22       counsel who reacted to the request, and the Court observed  
23       that we have 159 jurors who have spent hours going through  
24       a questionnaire, have tight schedules, along with the  
25       attorneys and everybody in the process, and given how

1 close we are to the trial date, the Court indicated that I  
2 would not be able to grant a request for an adjournment,  
3 and what we can do is to consider for opening  
4 statements -- a break as we did in the first trial  
5 following jury selection. We had a couple of days off for  
6 the attorneys to get up to speed on their presentations,  
7 and we can consider doing something like that, but we will  
8 start our jury selection on the 5th as planned.

9 Okay. Now we discussed the jury questionnaires  
10 briefly in our conference, and I believe there was an  
11 agreement, although one of the defense counsel asked for  
12 the opportunity to have a couple of more days before  
13 furnishing their proposed jurors to strike. Who was that?

14 **MR. H. SCHARG:** I made the suggestion, but  
15 whether that was a deadline by the Court or by jury  
16 commission, we understand that the jury commission needs  
17 that time to notify the jurors that are going to be  
18 excused.

19 So we agreed that the deadline will be Tuesday,  
20 May 29th at end of the business day, and sometime before  
21 the end of business day on the 29th, we will get together  
22 with the government, agree to the consensus of those that  
23 we agree to strike, and the rest of the witnesses will be  
24 called.

25 **THE COURT:** All right. Thank you,

1 Mr. Scharg.

2 We have to discuss how many jurors we're going to  
3 select. In the first trial we started with 16 I believe,  
4 and we didn't have anybody -- we didn't lose anybody until  
5 the end of the trial. Anybody have a request in terms of  
6 the number of jurors to seat?

7 **MR. GRAVELINE:** Based on the length of the  
8 trial, 16 is a safe number.

9 **THE COURT:** Anybody oppose that? We'll make  
10 it 16 then, and we will have six for the government plus  
11 two, and for defense counsel 10 plus two, and the  
12 attorneys all worked on a consensus basis during jury  
13 selection, which is what I am anticipating you will do  
14 here as well.

15 The first -- in the last trial, the Court elicit  
16 an agreement from counsel to excuse the extra jurors who  
17 are remaining at the conclusion of the trial at a  
18 random -- on a random basis rather than directing the  
19 alternates from Seats 13 through 16.

20 Is everybody in agreement to excuse the remaining  
21 jurors randomly as we did last trial? Anybody object?

22 **MR. GRAVELINE:** No objection from the  
23 government.

24 **MR. FEINBERG:** No objection. The only thing  
25 that I would request, your Honor, instead of 10 plus two



1 preempts -- there will be six defendants -- I will ask  
2 that there be 12 plus two, so that there will be an equal  
3 amount per defendant.

4 **THE COURT:** Well, if you're working,  
5 collaboratively, it doesn't seem quite so necessary to  
6 have -- it doesn't seem quite so necessary if you're  
7 working collaboratively to excuse the jurors, but if the  
8 defendants are going to have 14 total, would the  
9 government be asking for more than the --

10 **MR. GRAVELINE:** We probably would ask for one  
11 so that will bring the number to 25 plus 16. So we would  
12 be qualifying 41 jurors.

13 **THE COURT:** Twenty-five plus --

14 **MR. GRAVELINE:** Sixteen, the actual people in  
15 the box. That's the total number that we would need out  
16 of the 159. We would need 41 people who we would pass for  
17 cause.

18 **THE COURT:** Right. So in terms of the number  
19 of peremptories that you will be asking for --

20 **MR. GRAVELINE:** We would want nine if they  
21 have 14 as oppose to 12 and eight.

22 **THE COURT:** Right.

23 **MR. FEINBERG:** My only comment on the  
24 collaborative is that that shouldn't be in front of the  
25 jury. The jury shouldn't be thinking that if we are all

1 sitting down in their presence, that we're talking about  
2 jurors, that we must therefore all be part of the same  
3 allegation of the conspiracy. So if the jury can be  
4 excused while we're talking about the excusal, or if we  
5 are able to leave the courtroom and go into the attorney  
6 room, that would be my preference. Certainly not in front  
7 of the jury.

8 **THE COURT:** Okay. I don't think that was  
9 ever an issue in the first trial. In the first trial, the  
10 lawyers huddled quite often, and I could give a curvative  
11 instruction that tells them that we're asking counsel to  
12 cooperate with one another to get the information out and  
13 present it, and -- I mean, it's -- I'm suggesting by  
14 collaborating, you're going to make the trial much more  
15 efficient, and I certainly don't see the risk that they  
16 would have an adverse consequence as you're talking to  
17 each over. There's going to be as many huddles with the  
18 government and a defense lawyer or two occurring during  
19 the course of the trial as there would be for the lawyers  
20 to talk to each other.

21 **MR. FEINBERG:** That's different though to  
22 allege that the defense attorneys and the government are  
23 collaborating with themselves.

24 **THE COURT:** Well, you will be surprised.  
25 Okay. We can try to do it in a way that doesn't offend

1 your sensibility, Mr. Feinberg.

2 **MR. FEINBERG:** Thank you.

3 **THE COURT:** So the -- so the number of jurors  
4 then will be 14 for defense counsel total and nine for the  
5 government.

6 The trial schedule will be from nine to 1:00  
7 daily, perhaps as long as 1:30 for planning purposes, but  
8 close to one as possible.

9 I'll expect the lawyers to be here at least 15  
10 minutes early before 9:00, so that if there are issues to  
11 address, we can address those issues without having the  
12 jurors sit around waiting for us to get ready.

13 We're going to be conducting the trial in Judge  
14 Tarnow's courtroom on the first floor. We'll need to  
15 figure out the set up and the technology available there.  
16 It is somewhat different from what I've enjoyed in my  
17 courtroom. My courtroom is under construction. So we  
18 will use Judge Tarnow's space since he's gone for June and  
19 July.

20 So that applies to the trial process, but not the  
21 jury selection process. So jury selection is going to be  
22 from nine to five until we get a jury established.

23 We're going to have a semi-anonymous jury, so that  
24 the only information about them that will be communicated  
25 in the course of the selection process and the

1 instructions and alike will be referenced by their juror  
2 number.

3 In the first trial the attorneys on both sides  
4 agreed on a preliminary instruction which read:

5 The Court and all counsel, in recognition of  
6 privacy concerns, will not ask for your names or  
7 addresses. We'll simply refer to you by your juror  
8 number, and that was a -- there were a couple of other  
9 options out there in case law that sounded more like  
10 making up a story for the jurors rather than telling them  
11 that they are going to be referred to by their juror  
12 number out of privacy concerns.

13 So is there anybody that would object to that  
14 approach in the inclusion of that in the preliminary  
15 instructions? Anybody on the defense side object?  
16 Hearing none -- what about on the government side?

17 **MR. GRAVELINE:** No objection, your Honor.

18 **THE COURT:** That will be incorporated in the  
19 preliminary instructions.

20 We need to get a short statement of the case to be  
21 read at the outset of the voir dire. We need to -- you  
22 know, the suggested instructions would have the Court  
23 defining the charges and the elements that are comprised  
24 by each charge, and that was pretty easy in the first case  
25 because there were only two counts that were involved for

1 all four of the defendants in that case. This includes a  
2 lot more charges, a lot more counts. We have a couple of  
3 defendants with 14 counts, others with 11, and so I'm  
4 interested to know how much or how little should be given  
5 to them by way of the Court's introduction of the case for  
6 them.

7 Does anybody have a thought? And a corollary to  
8 that question is whether or not anybody in the case wants  
9 to have the Court read the indictment to the -- as a part  
10 of the case? Again, in the first case, defense counsel  
11 and the government -- and the government agreed not to  
12 read the indictment to the jury.

13 Mr. Graveline?

14 **MR. GRAVELINE:** It would be the government's  
15 preference not to read the indictment. I don't think that  
16 serves a lot of useful purposes in the beginning, but what  
17 I would suggest, we can draft up a summary of the charges,  
18 and present it to the defense and the Court, and see where  
19 people stand after that.

20 It will be lengthier than what we did last time.  
21 It was a paragraph. This one will be probably two or  
22 three paragraphs, but let us take a crack at it. If we  
23 can get something that people can agree on, that's great.  
24 If not, maybe less is more.

25 **THE COURT:** Okay. All right.

1                   **MR. THEIS:** If we can get that, and then if  
2 we have anything to add to, we will present it to the  
3 government. I think by the time we start, we will either  
4 be in agreement or close to it.

5                   **MR. SPIELFOGEL:** Your Honor, I think it would  
6 be our preference that the government -- that the  
7 statement that you read list the elements as you had just  
8 suggested of each one of the charges. That would be my  
9 preference, and it might be an easier way of doing it.

10                   Certainly, we don't want the whole indictment read  
11 because there are a lot of things in the indictment that  
12 are going to kinda of fall by the wayside during the  
13 course of the trial.

14                   So that would be our preference on behalf of  
15 Mr. Bailey, that the elements be told to the jury.

16                   **THE COURT:** All right. Anyone else have a  
17 thought?

18                   **MR. S. SCHARG:** I would agree.

19                   **MR. H. SCHARG:** I would agree.

20                   **MR. MAGIDSON:** I would agree with that  
21 analysis.

22                   **MR. FEINBERG:** I would agree.

23                   **MR. JOHNSON:** No objection on behalf of Mr.  
24 Patterson.

25                   **THE COURT:** All right. So that might affect

1 at least the format of what you're going to try to put  
2 together?

3 **MR. GRAVELINE:** The issue that we came up  
4 with last time was there was some argument about what the  
5 elements were in terms of jury instructions toward the end  
6 of that trial, and so drafting elements at the beginning  
7 of the trial until we set up on jury instruction, be could  
8 be problematic. And so to do it elementary, I think could  
9 be problematic right now.

10 And so that's what we were just discussing here.  
11 Even in that initial reading from the last time, I think  
12 we changed some elements by the time we got to the jury  
13 instructions, and maybe we need to have pretrial  
14 litigation about that first and get set on it, but I mean,  
15 that was something that we were contemplating here.

16 So if the summary is going to include the  
17 elements, then I think there's going to be some litigation  
18 pretrial on that.

19 **MR. SPIELFOGEL:** Your Honor, that's the exact  
20 reason why we should do the elements pretrial, so that we  
21 know what the elements are going into the trial, so we can  
22 make certain statements to the jury in opening as to what  
23 has to be proved, and if there are issues on the elements,  
24 I would ask that we litigate those before we begin  
25 certainly opening statements, and now I'm saying before we

1 question the jurors, so when this is read to them, we are  
2 in agreement on what the elements are.

3 We're going to have to do it eventually, so let's  
4 do it before the trial begins.

5 **THE COURT:** All right. Well again, Mr.  
6 Graveline has volunteered to try to write up what he has  
7 in mind, and you are welcome to submit your own versions  
8 of preliminary instructions, and this will fall within  
9 that period that's going to be dead time, whether it's a  
10 couple of days, day and a half or whatever period is  
11 between the conclusion of the jury selection process and  
12 the giving of the preliminary instructions. So we'll have  
13 some time to work that out. I think both sides made some  
14 good observations about if we do it by way of summarizing  
15 the elements out, we have to be careful to do it right.

16 We're going to need a witness list to read to the  
17 jury, and we're going to have a lot of witnesses. I  
18 understand from talking with counsel that the witness list  
19 is now 170?

20 **MR. GRAVELINE:** Yes. We did email counsel  
21 last week and asked about stipulations as to the chemists  
22 for the drugs that were seized, and all counsel responded  
23 that they could agree to those stipulations. I think that  
24 takes out about 12 to 14 of those witnesses. So I think  
25 we're probably down to about 155 witnesses.



1                   **THE COURT:** That's almost a third more than  
2                   the number of witnesses in the first case, and most of the  
3                   witnesses called in the first case were not cross-examined  
4                   by defense counsel. So hopefully it won't add much to the  
5                   length of the case as it looks like it might.

6                   Mr. Scharg?

7                   **MR. H. SCHARG:** First of all, I don't think  
8                   if Mr. Graveline produces those same witnesses from the  
9                   first trial, we probably won't cross examine those  
10                  witnesses either, but that's not the problem.

11                  First of all, in terms of the getting together  
12                  with the -- striking the prospective jurors after these  
13                  questionnaires, motion to strike, after we agree to those  
14                  jurors that there is a consensus that they should be  
15                  stricken for cause, there's going to be a grouping,  
16                  hopefully less rather than more, of jurors that we can't  
17                  agree upon that should be stricken.

18                  Do we get together -- should the Court set a  
19                  separate pretrial conference to go over that list, or wait  
20                  so that we can call those jurors off before trial?

21                  **THE COURT:** Well, if you're able -- whenever  
22                  you've reach an agreement --

23                  **MR. S. SCHARG:** Which will be by the end of  
24                  the business day on 29th.

25                  **THE COURT:** Right.

1                   **MR. H. SCHARG:** We're going to have three  
2 lists, a list of those that we agree to strike, a list of  
3 those that we cannot agree to strike, and a list of those  
4 who we believe should be in that panel.

5                   So for the first part, which is those that we  
6 agree to strike, the Court through the jury commission  
7 will be able to notify those people not to show up.

8                   **THE COURT:** Right.

9                   **MR. H. SCHARG:** But then the second grouping  
10 of the jurors that we cannot agree about, should we --  
11 between the 29th and the 5th, should we --

12                   **THE COURT:** As much as you can agree on,  
13 whenever you agree on it is fine, but I would expect you  
14 to continue your efforts to resolve differences.  
15 Approaching the questioning of those people as a separate  
16 matter during the selection process, I don't think would  
17 be particularly useful. They are going to be a part of  
18 the larger group, and we'll just deal with them as they  
19 come.

20                   **MR. H. SCHARG:** Well, what I was hoping was  
21 that the second grouping, the ones that we cannot agree  
22 that should be excused, if we could have a separate  
23 hearing with the Court as to that pool, and the Court can  
24 make some preliminary decision as to who should be excused  
25 for cause so they won't have to come in.

1                   **THE COURT:** If that's possible. I think the  
2 problem with it is that you almost can't do it without  
3 asking the individualized questions that you would ask of  
4 people if one side believes it's not clear enough.

5                   The way we're going to do the selection process is  
6 we've got 159. We've got a lot of people to deal with,  
7 and we're going to deal with roughly half of them on the  
8 day that we start jury selection, and then hopefully we  
9 get through those people in the day, and the next day we  
10 bring in the other half, and then we somehow combine them  
11 all.

12                   **MR. H. SCHARG:** It's my understanding we're  
13 down to 158. One is going to be excused.

14                   Second of all, we were in court a couple of weeks  
15 ago regarding some pretrial publicity, and at that time  
16 defense counsel raised their concerns regarding a series  
17 of articles that were in the Detroit News, and at that  
18 time the Court suggested that we may have individual voir  
19 dire.

20                   **THE COURT:** Right.

21                   **MR. H. SCHARG:** Well, then we have received  
22 an email from ma'am docket manager, who indicated that  
23 something of a reversal of the Court's preliminary  
24 decision. Is it now the Court's position that we will not  
25 have individual voir dire?

1                   **THE COURT:** Well, we're going to see. Right  
2 now it doesn't look like it will be needed because almost  
3 nobody among the prospective jurors remembers reading  
4 anything about the case.

5                   **MR. H. SCHARG:** So was your decision based  
6 upon the questionnaire?

7                   **THE COURT:** Yes, it was based on the review  
8 of the questionnaires which demonstrate that --

9                   **MR. H. SCHARG:** Okay. Got it. One more  
10 point of clarification. It is my understanding that  
11 because of the changing of the guard of the prosecution,  
12 the Court is not going to adjourn the trial date, and  
13 we're going to commence jury selection on the 5th of June  
14 but the Court is incline to give the government some time  
15 between --

16                   **THE COURT:** Not just the government, you as  
17 well. I'm talking about no more than a couple of days.

18                   **MR. H. SCHARG:** Very good. Thank you.

19                   **THE COURT:** All right. Okay.

20                   **MR. FEINBERG:** Is the Court going to address  
21 when it will be off?

22                   **THE COURT:** Yes. So the general trial  
23 schedule is going to hold from Monday through Friday, and  
24 we're going to take the week of July 4th off, which is  
25 Monday the 2nd through Friday the 6th, and we're going to

1 take off the 6th of August to the 10th of August. That  
2 will also be explained to the jury, of course.

3 All right. What else do we need to cover?

4 **MR. GRAVELINE:** I think that's it from the  
5 government, your Honor.

6 **THE COURT:** We have a couple of motions in  
7 limine that we might want to address. One is Mr. Bailey's  
8 motion to preclude the recall of government witnesses,  
9 meaning Agent Ruiz, and I've had the opportunity to review  
10 it. Has there been an answer to that motion?

11 **MR. GRAVELINE:** I don't believe there was a  
12 reply to the motion. We responded, but there was no  
13 reply.

14 **THE COURT:** So essentially, this I'm sure  
15 arose out of observations from the first trial. The --  
16 you want to make sure if this is done, that it doesn't  
17 lead to unnecessary duplication, and indeed, it was, I  
18 thought, a very big success in the first trial. It helped  
19 to allow the government and defense counsel both the  
20 opportunity to weigh in. I mean, for every question  
21 asked, there were -- there was considerable examination.  
22 I didn't think that any of the evils identified in the  
23 motion of getting too friendly, or providing too much  
24 emphasis was -- didn't seem to be a problem at all and,  
25 indeed, it made it easier to follow the evidence that was

1 coming in. I saw absolutely no suggestion that there was  
2 undue influence given to the agent's testimony because he  
3 made multiple appearances on the witness stand.

4 So I'm going to deny. Obviously -- I'm going to  
5 deny the motion, but if there appears to be-- if it's  
6 being abused in some manner, if there's too much  
7 repetition, or one of the other problems is manifest as  
8 argued might be the case among defense counsel, I'll be  
9 glad to reconsider. That's the beauty of a motion in  
10 limine. Nothing is ever final.

11 But I didn't see it abused in the first trial. I  
12 thought it helped actually to break up the testimony, and  
13 so I'll plan to allow that as long as it is handled within  
14 reason.

15 There is a -- there is another motion in limine  
16 that breaks down into 11 different issues. I don't think  
17 that we have a response from the government.

18 **MR. GRAVELINE:** We don't because it's going  
19 to take awhile to respond to that particular motion  
20 because it is 11 different aspects. We have been working  
21 on that response, and hope to have something to the Court  
22 by the end of the week.

23 **THE COURT:** Okay. Okay. I don't have  
24 anything else that needs to be addressed.

25 How about defense counsel?

1                   **MR. MAGIDSON:** We talked about the government  
2 disclosing co-conspirator's statements prior to the  
3 time --

4                   **THE COURT:** Oh, yes. That also, in  
5 conformance with the order the Court entered in the first  
6 trial, the government will -- if offering any 801(d)(2)  
7 evidence, will be obliged -- was it the day before?

8                   **MR. GRAVELINE:** I believe the Court's order  
9 said for to us give notice the day before, and then if  
10 there is any objection, be prepare to argue before the  
11 trial date, the next day.

12                   **THE COURT:** Right. And I don't recall more  
13 than one or two arguments that took place.

14                   **MR. GRAVELINE:** I think by and large we were  
15 able to resolve a whole bunch of issues before trial.

16                   **THE COURT:** Right. So they'll have the same  
17 obligation to disclose witnesses offering co-conspirator  
18 testimony that will be given to you the day before the  
19 intended use, and then if there's a problem, you'll have  
20 15 minutes before jury is brought out to deal with it.

21                   Anything else?

22                   **MR. S. SCHARG:** Two discovery issues.

23                   **THE COURT:** Okay.

24                   **MR. S. SCHARG:** Reviewing the trial  
25 transcripts from Group 1, there was reference to the

1 cooperation agreements of cooperating witnesses, plea  
2 agreements of the cooperating witnesses, Rule 11's. It is  
3 my understanding after conferring with counsel -- defense  
4 counsel from the first trial, that that material was  
5 not -- which is Jencks material -- was not provided to the  
6 defense counsel in terms of pretrial discovery or Jencks  
7 material discovery, but those documents were provided on  
8 the day that the witnesses were scheduled to testify, and  
9 then the materials were gathered up at end of the day --

10 **THE COURT:** Right.

11 **MR. S. SCHARG:** -- which I think is unique to  
12 this district to say the least, and asked the government  
13 on the record if that is -- if that is the position they  
14 are taking, and I would oppose that, and I believe that  
15 that's Jencks material. And second of all, we should  
16 provided with that under the common procedure and policy  
17 of this district before trial. I don't understand why it  
18 would not be given to us to prepare for cross examination  
19 of those witnesses.

20 Second of all, Steven Arthur, known as Steve-O,  
21 and his name has come up in both of my suppression motions.  
22 He was listed as a witness in the first trial, but was not  
23 called. It is my anticipation that he will be called in  
24 the second trial.

25 Steve Arthur, when he was arrested on



1 September 25, 2015 in a video interview with task force  
2 agents, disclosed that he had been in a mental institution  
3 for three to six months, and that's why he was somewhat  
4 dysfunctional in terms of his interview.

5 It is my understanding that the hospital records  
6 were not produced at the first trial because the fact that  
7 the government struck him as a witness.

8 It is my understanding -- at least I would like to  
9 get the government's position at this time if Steven  
10 Arthur will be called, and if he's going to be called,  
11 when we can expect to have those hospital records which  
12 indicate that he was in a mental institution between three  
13 and six months, and I would suggest to the Court that  
14 those records in and of themselves would be considered  
15 Jencks material.

16 **THE COURT:** All right. Thanks, Mr. Scharg.

17 Mr. Graveline?

18 **MR. GRAVELINE:** The government does not plan  
19 on calling Steven Arthur in this case as a witness.

20 And then to the first question, Rule 11's will be  
21 provided to the defense counsel pretrial. The cooperation  
22 agreement, we will not be handing out copies of that.  
23 That will be open for inspection. The defense counsel can  
24 come over to the office and take a look at the physical  
25 exhibits. They are available for inspection at that time.

1 They can take notes on it. They will be available for  
2 cross examination purposes in the trial, but we will not  
3 be providing cooperation agreements to the defense, and  
4 that's the way -- I think last time it was the day before.  
5 Because of the speed of the trial, we were having some of  
6 the co-defendants plead guilty at that time, and so that  
7 was the only reason it was done the day before, but the  
8 cooperation agreements will be available for inspection  
9 when they come over to the view the physical exhibits,  
10 which will be next week.

11 **THE COURT:** All right. That sounds good to  
12 me. Anybody else?

13 **MR. GRAVELINE:** Nothing further. I don't  
14 think we have anything further.

15 **THE COURT:** Okay. All right. That will be  
16 the day.

17 **DEFENDANT ROBINSON:** Your Honor?

18 **THE COURT:** Well, is your lawyer here?

19 **THE CLERK:** No, it's Mr. Swor. He's gone.

20 **THE COURT:** I can't really talk with you  
21 while your lawyer is not here.

22 **DEFENDANT ROBINSON:** That's the problem. I'm  
23 trying -- I'm trying to fire him off my case. I don't  
24 need him. I would like to get another attorney.

25 **THE COURT:** Well, we'll communicate that to

1 Mr. Swor that you have concerns along those lines, and  
2 encourage him to get together with you.

3  
4 (Proceedings concluded.)

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6 **C E R T I F I C A T I O N**

7 I, Ronald A. DiBartolomeo, official court  
8 reporter for the United States District Court, Eastern  
9 District of Michigan, Southern Division, appointed  
10 pursuant to the provisions of Title 28, United States  
11 Code, Section 753, do hereby certify that the foregoing is  
12 a correct transcript of the proceedings in the  
13 above-entitled cause on the date hereinbefore set forth.

14 I do further certify that the foregoing  
15 transcript has been prepared by me or under my direction.

16  
17  
18 s/Ronald A. DiBartolomeo

May 9, 2019

19 Ronald A. DiBartolomeo, CSR  
20 Official Court Reporter

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Date

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